



Sen. Don Harmon

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LRB094 05111 RLC 42804 a

1 AMENDMENT TO SENATE BILL 72

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 72 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Juvenile Court Act of 1987 is amended by  
5 changing Section 5-401.5 as follows:

6 (705 ILCS 405/5-401.5)

7 (This Section may contain text from a Public Act with a  
8 delayed effective date)

9 Sec. 5-401.5. When statements by minor may be used.

10 (a) In this Section, "custodial interrogation" means any  
11 interrogation (i) during which a reasonable person in the  
12 subject's position would consider himself or herself to be in  
13 custody and (ii) during which a question is asked that is  
14 reasonably likely to elicit an incriminating response.

15 In this Section, "electronic recording" includes motion  
16 picture, audiotape, videotape, or digital recording.

17 In this Section, "place of detention" means a building or a  
18 police station that is a place of operation for a municipal  
19 police department or county sheriff department or other law  
20 enforcement agency at which persons are or may be held in  
21 detention in connection with criminal charges against those  
22 persons or allegations that those persons are delinquent  
23 minors.

24 (b) An oral, written, or sign language statement of a minor

1 who, at the time of the commission of the offense was under the  
2 age of 17 years, made as a result of a custodial interrogation  
3 conducted at a police station or other place of detention on or  
4 after the effective date of this amendatory Act of the 93rd  
5 General Assembly shall be presumed to be inadmissible as  
6 evidence against the minor in any criminal proceeding or  
7 juvenile court proceeding, for an act that if committed by an  
8 adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1,  
9 9-3, 9-3.2, or 9-3.3, of the Criminal Code of 1961 or under  
10 clause (d) (1) (F) of Section 11-501 of the Illinois Vehicle Code  
11 unless:

12 (1) an electronic recording is made of the custodial  
13 interrogation; and

14 (2) the recording is substantially accurate and not  
15 intentionally altered.

16 (c) Every electronic recording required under this Section  
17 must be preserved until such time as the minor's adjudication  
18 for any offense relating to the statement is final and all  
19 direct and habeas corpus appeals are exhausted, or the  
20 prosecution of such offenses is barred by law.

21 (d) If the court finds, by a preponderance of the evidence,  
22 that the minor was subjected to a custodial interrogation in  
23 violation of this Section, then any statements made by the  
24 minor during or following that non-recorded custodial  
25 interrogation, even if otherwise in compliance with this  
26 Section, are presumed to be inadmissible in any criminal  
27 proceeding or juvenile court proceeding against the minor  
28 except for the purposes of impeachment.

29 (e) Nothing in this Section precludes the admission (i) of  
30 a statement made by the minor in open court in any criminal  
31 proceeding or juvenile court proceeding, before a grand jury,  
32 or at a preliminary hearing, (ii) of a statement made during a  
33 custodial interrogation that was not recorded as required by  
34 this Section because electronic recording was not feasible,

1 (iii) of a voluntary statement, whether or not the result of a  
2 custodial interrogation, that has a bearing on the credibility  
3 of the accused as a witness, (iv) of a spontaneous statement  
4 that is not made in response to a question, (v) of a statement  
5 made after questioning that is routinely asked during the  
6 processing of the arrest of the suspect, (vi) of a statement  
7 made during a custodial interrogation by a suspect who  
8 requests, prior to making the statement, to respond to the  
9 interrogator's questions only if an electronic recording is not  
10 made of the statement, provided that an electronic recording is  
11 made of the statement of agreeing to respond to the  
12 interrogator's question, only if a recording is not made of the  
13 statement, (vii) of a statement made during a custodial  
14 interrogation that is conducted out-of-state, (viii) of a  
15 statement given at a time when the interrogators are unaware  
16 that a death has in fact occurred, or (ix) of any other  
17 statement that may be admissible under law. The State shall  
18 bear the burden of proving, by a preponderance of the evidence,  
19 that one of the exceptions described in this subsection (e) is  
20 applicable. Nothing in this Section precludes the admission of  
21 a statement, otherwise inadmissible under this Section, that is  
22 used only for impeachment and not as substantive evidence.

23 (f) The presumption of inadmissibility of a statement made  
24 by a suspect at a custodial interrogation at a police station  
25 or other place of detention may be overcome by a preponderance  
26 of the evidence that the statement was voluntarily given and is  
27 reliable, based on the totality of the circumstances.

28 (g) Any electronic recording of any statement made by a  
29 minor during a custodial interrogation that is compiled by any  
30 law enforcement agency as required by this Section for the  
31 purposes of fulfilling the requirements of this Section shall  
32 be confidential and exempt from public inspection and copying,  
33 as provided under Section 7 of the Freedom of Information Act,  
34 and the information shall not be transmitted to anyone except

1 as needed to comply with this Section.

2 (Source: P.A. 93-206, eff. 7-18-05; 93-517, eff. 8-6-05.)

3 Section 10. The Code of Criminal Procedure of 1963 is  
4 amended by changing Section 103-2.1 as follows:

5 (725 ILCS 5/103-2.1)

6 (This Section may contain text from a Public Act with a  
7 delayed effective date)

8 Sec. 103-2.1. When statements by accused may be used.

9 (a) In this Section, "custodial interrogation" means any  
10 interrogation during which (i) a reasonable person in the  
11 subject's position would consider himself or herself to be in  
12 custody and (ii) during which a question is asked that is  
13 reasonably likely to elicit an incriminating response.

14 In this Section, "place of detention" means a building or a  
15 police station that is a place of operation for a municipal  
16 police department or county sheriff department or other law  
17 enforcement agency, not a courthouse, that is owned or operated  
18 by a law enforcement agency at which persons are or may be held  
19 in detention in connection with criminal charges against those  
20 persons.

21 In this Section, "electronic recording" includes motion  
22 picture, audiotape, or videotape, or digital recording.

23 (b) An oral, written, or sign language statement of an  
24 accused made as a result of a custodial interrogation at a  
25 police station or other place of detention shall be presumed to  
26 be inadmissible as evidence against the accused in any criminal  
27 proceeding brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3,  
28 9-3.2, or 9-3.3 of the Criminal Code of 1961 or under clause  
29 (d) (1) (F) of Section 11-501 of the Illinois Vehicle Code  
30 unless:

31 (1) an electronic recording is made of the custodial  
32 interrogation; and

1           (2) the recording is substantially accurate and not  
2 intentionally altered.

3           (c) Every electronic recording required under this Section  
4 must be preserved until such time as the defendant's conviction  
5 for any offense relating to the statement is final and all  
6 direct and habeas corpus appeals are exhausted, or the  
7 prosecution of such offenses is barred by law.

8           (d) If the court finds, by a preponderance of the evidence,  
9 that the defendant was subjected to a custodial interrogation  
10 in violation of this Section, then any statements made by the  
11 defendant during or following that non-recorded custodial  
12 interrogation, even if otherwise in compliance with this  
13 Section, are presumed to be inadmissible in any criminal  
14 proceeding against the defendant except for the purposes of  
15 impeachment.

16           (e) Nothing in this Section precludes the admission (i) of  
17 a statement made by the accused in open court at his or her  
18 trial, before a grand jury, or at a preliminary hearing, (ii)  
19 of a statement made during a custodial interrogation that was  
20 not recorded as required by this Section, because electronic  
21 recording was not feasible, (iii) of a voluntary statement,  
22 whether or not the result of a custodial interrogation, that  
23 has a bearing on the credibility of the accused as a witness,  
24 (iv) of a spontaneous statement that is not made in response to  
25 a question, (v) of a statement made after questioning that is  
26 routinely asked during the processing of the arrest of the  
27 suspect, (vi) of a statement made during a custodial  
28 interrogation by a suspect who requests, prior to making the  
29 statement, to respond to the interrogator's questions only if  
30 an electronic recording is not made of the statement, provided  
31 that an electronic recording is made of the statement of  
32 agreeing to respond to the interrogator's question, only if a  
33 recording is not made of the statement, (vii) of a statement  
34 made during a custodial interrogation that is conducted

1 out-of-state, (viii) of a statement given at a time when the  
2 interrogators are unaware that a death has in fact occurred, or  
3 (ix) of any other statement that may be admissible under law.  
4 The State shall bear the burden of proving, by a preponderance  
5 of the evidence, that one of the exceptions described in this  
6 subsection (e) is applicable. Nothing in this Section precludes  
7 the admission of a statement, otherwise inadmissible under this  
8 Section, that is used only for impeachment and not as  
9 substantive evidence.

10 (f) The presumption of inadmissibility of a statement made  
11 by a suspect at a custodial interrogation at a police station  
12 or other place of detention may be overcome by a preponderance  
13 of the evidence that the statement was voluntarily given and is  
14 reliable, based on the totality of the circumstances.

15 (g) Any electronic recording of any statement made by an  
16 accused during a custodial interrogation that is compiled by  
17 any law enforcement agency as required by this Section for the  
18 purposes of fulfilling the requirements of this Section shall  
19 be confidential and exempt from public inspection and copying,  
20 as provided under Section 7 of the Freedom of Information Act,  
21 and the information shall not be transmitted to anyone except  
22 as needed to comply with this Section.

23 (Source: P.A. 93-206, eff. 7-18-05; 93-517, eff. 8-6-05.)

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law."